IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 670 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDAR VALLABHBHAI SAHKARI BANK LTD.

Versus

SHALIN HOTELS LTD.

Appearance:

1. Special Civil Application No. 670 of 2004

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

MS SHUBHRA ALMOULA for Respondent No. 1-6

UNSERVED-REFUSED (R) for Respondent No. 1-4,6

RULE SERVED BY DS for Respondent No. 5,7

SINGHI & CO for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/10/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner bank has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal dated 2.12.2003 below Exh.1 and Exh.18 in Appeal No.83 of 2003. The petitioner bank has filed a Summary Arbitration Suit No.1437 of 2000 before the Board of Nominees, Ahmedabad for an amount of Rs.40,16,652/-. The Board of Nominees, Ahmedabad by judgment and order dated 3.10.2001 allowed the aforesaid suit directing the respondents to make payment of Rs.40,16,652/- alongwith interest at the rate of 19% from 30.11.2000. Being aggrieved and dissatisfied with the judgment and award passed by the Board of Nominees dated 3.10.2001 in Summary Arbitration Suit No.1437 of 2000, the respondent no.1 to 6 had preferred appeal before the Gujarat State Cooperative Tribunal being Appeal No.83 of 2003. As there was a delay of more than one and half years approximately, an application for condonation of delay was submitted by the original appellants i.e. the respondent no.1 to 6. The said application came to be heard by the Gujarat State Cooperative Tribunal and the Tribunal vide order dated 2.12.2003 did not entertain the appeal on the ground of limitation and rejected the application submitted by the original appellant no.1 to 6 for condonation of delay in preferring the appeal. However, while not entertaining the appeal, the Tribunal passed an order that the petitioner bank to recover the amount first by selling the property which is mortgaged and thereafter, to recover the same from the property of the other defendants and to that extent, the judgment and award passed by the Board of Nominees was modified. Being aggrieved and dissatisfied with the aforesaid direction issued by the Tribunal passed in its order dated 2.12.2003 passed in Appeal No.83 of 2003 modifying the judgment and award passed by the Board of Nominees dated 30.10.2001 in Summary Arbitration Suit No.1437 of 2000, the petitioner bank had preferred the present Special Civil Application under Article 227 of the Constitution of India.

2. Shri P.V.Nanavaty, Learned Advocate for the petitioner bank had submitted that while dismissing the appeal and not entertaining the appeal on the ground of limitation, the Tribunal ought not to have and could not have modified the judgment and award passed by the Board of Nominees. He has further submitted that on one hand, the Tribunal dismisses the appeal on the ground of limitation and on the other hand, the Tribunal is modifying the judgment and award passed by the Board of Nominees which is not permissible and the said order is

without jurisdiction and authority under the law. He has also further submitted that in fact, they have tried their best to sell the mortgaged property but it is not possible for the petitioner bank to get anything from the mortgaged property at present as there are no buyers and their efforts have failed. So far as the respondent no.7 is concerned, it is made clear that in view of the fact tha the respondent no.7 had already resigned as a Director, he is not liable to make any payment pursuant to the judgment and award and therefore, even the judgment and award is not passed against the respondent no.7.

3. Ms.Shubra Almoula, Learned Advocate appears on behalf of the respondent no.1 to 6. She has submitted that in fact, the judgment and award passed by the Board of Nominees is not modified and at the most, it can be said to be an irregularity and it cannot be termed as an illegality. She has further submitted that the mortgaged properties is already with the petitioner bank and therefore, they are bound to recover and execute the decree and satisfy the decree first by selling the mortgaged property and if such a direction is issued by the Tribunal, it cannot be said that there is any illegality committed by the Tribunal. She has further stated that if some reasonable time is granted to the respondent no.1 to 6 then they will see to it that the entire amount is paid to the petitioner bank.

4. Shri Bijal Chatrapati, Learned Advocate appears for the respondent no.7 and affidavit in reply is also filed on behalf of the respondent no.7. It is submitted that in the affidavit in reply so far as the respondent no.7 is concerned, the award against them is already quashed and set aside by the Tribunal by judgment and order passed in Appeal No.188 of 2002.

5. Heard the Learned Advocates appearing for the parties.

6. It is an admitted position of fact that there was a delay in preferring the appeal. An application for condonation of delay was submitted by the respondent no.1 to 6 in the appeal. That application for condonation of delay came to be dismissed on the ground of limitation and the Tribunal did not entertain the appeal. If once the appeal is dismissed on the ground of limitation and is not entertained, the Tribunal is not having any jurisdiction to pass a further order on merits. In the present case, while dismissing the appeal and not entertaining the appeal on the ground of limitation, the

Tribunal has modified the judgment and award passed by the Board of Nominee which is not permissible at all and if on one hand, the Tribunal dismisses the appeal on the ground of limitation and does not entertain the appeal, there was no question for the Tribunal to further pass an order modifying the judgment and award passed by the Board of Nominees. Under the circumstances, further direction issued by the Tribunal in its order dated 2.12.2003 was not warranted at all and the said direction is required to be quashed and set aside, meaning thereby, the directions which is issued by the Tribunal in its order dated 2.12.2003 to the effect that while executing the judgment and award, the petitioner is required to first recover the amount from the mortgaged property and only thereafter, the same is required to be executed and recovered from the other defendants is accordingly quashed and set aside. It is also an admitted position that other defendants are held to be jointly and severally liable to make good the judgment and award and against them, the judgment and award is passed by the Board of Nominees. Even otherwise, on merits also, such a direction which is issued by the Tribunal in its order dated 2.12.2003 could not have been issued by the Tribunal. In that view of the matter, the petition succeeds. The direction issued by the Gujarat State Cooperative Tribunal in its order dated 2.12.2003 below Exh.1 in Appeal No.81 of 2003 to the extent and by which the Tribunal has directed the petitioner that while executing the judgment and award passed by the Board of Nominees, the petitioner is required to recover the amount first from the mortgaged property and thereafter, only from the properties of other defendants is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(M.R.Shah, J)
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